

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Armida Torres was appointed as a Commissioner of the City of Chula Vista Growth Management Oversight Commission (“GMOC”) on April 7, 2009, and assumed office on April 21, 2009.

This matter arose out of a referral from the City of Chula Vista, alleging a single violation of the Political Reform Act (the “Act”)<sup>1</sup> for failing to file an Assuming Office Statement of Economic Interests (“SEI”) which was due by May 21, 2009.

For the purposes of this Default Decision and Order, Respondent’s violations are stated as follows:

**COUNT 1:** As a Commissioner on the City of Chula Vista Growth Management Oversight Commission, Respondent Armida Torres failed to file an Assuming Office SEI which was due by May 21, 2009, in violation of Sections 87300 and 87302, subdivision (b).

**COUNT 2:** As a Commissioner on the City of Chula Vista Growth Management Oversight Commission, Respondent Armida Torres failed to file a 2009 Annual SEI which was due by April 1, 2010, in violation of Sections 87300 and 87302, subdivision (b).

### **THE RESPONDENT**

This matter involves one respondent: Armida Torres has been serving as a Commissioner for GMOC since assuming office on April 21, 2009. Respondent was, at all times relevant to this Default Decision and Order, a Commissioner of GMOC.

### **DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT**

When the Fair Political Practices Commission (the “Commission”) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

conducted in accordance with the Administrative Procedure Act (the “APA”).<sup>2</sup> (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation’s form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent’s failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent’s right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent’s express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

## **PROCEDURAL REQUIREMENTS AND HISTORY**

### **A. Initiation of the Administrative Action**

Section 91000.5 provides that “[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.” (Section 91000.5, subd. (a).)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records (“Certification”) filed herewith at Exhibit A, A–1 through A–10, and incorporated herein by reference.

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<sup>2</sup> The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent in this matter by serving her with a Report in Support of a Finding of Probable Cause (the “Report”) by certified mail, return receipt requested,<sup>3</sup> on April 12, 2010. (Certification, Exhibit A-1.) The original return receipt addressed to Respondent was signed by Respondent on April 14, 2010, and was returned to the Enforcement Division. (Certification, Exhibit A-2.)

An Amended Report in Support of a Finding of Probable Cause (the “Amended Report”) was sent by certified mail, return receipt requested, on June 9, 2010. (Certification, Exhibit A-3.) The original return receipt for the Amended Report addressed to Respondent was signed by Respondent on June 12, 2010, and was returned to the Enforcement Division. (Certification, Exhibit A-4.) Therefore, the administrative action commenced on June 12, 2010, the date the registered mail receipt was signed, and the five year statute of limitations was effectively tolled on this date.

As required by Section 83115.5, the packet served on Respondent contained a cover letter and a memorandum describing Probable Cause Proceedings, advising that Respondent had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (Certification, Exhibit A-5.) Respondent neither requested a probable cause conference nor submitted a written response to the Report.

**B. Ex Parte Request for a Finding of Probable Cause**

Since Respondent failed to request a probable cause conference or submit a written response to the Amended Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter, on July 7, 2010. (Certification, Exhibit A-6.) Respondent was mailed a copy of the Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation Be Prepared and Served. (Certification, Exhibit A-7.)

On July 13, 2010, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-8.)

**C. The Issuance and Service of the Accusation**

Under the Act, if the Executive Director makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

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<sup>3</sup> Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a), requires that, upon the filing of the accusation, the agency shall: 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, 11507.7 and 11508.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On July 13, 2010, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6, 11507.7 and 11508, and a cover letter dated July 15, 2010, were personally served Respondent on July 23, 2010. (Certification, Exhibit A-9.)

Along with the Accusation, the Enforcement Division served Respondent with a "Statement to Respondent" which notified her that she could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, she would be deemed to have waived the right to a hearing. Respondent did not file a Notice of Defense within the statutory time period, which ended on August 9, 2010.

As a result, on August 17, 2010, Commission Counsel Ty D. Moore sent a letter to Respondent advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for September 9, 2010. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (Certification, Exhibit A-10.)

### **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials that may be materially affected by their official actions be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every state and local agency to adopt and promulgate a conflict of interest code. Under Section 87300, the requirements of an agency's conflict of interest code have the force of law, and any violation of those requirements is deemed a violation of the Act.

Section 87302, subdivision (a), provides that an agency's conflict of interest code must specifically designate the positions within the agency that are required to file statements of economic interests, disclosing reportable investments, business positions, interests in real property, and sources of income. Under Section 82019, subdivision (a), and Section 87302, the persons who are to be designated in an agency's conflict of interest code are the officers, employees, members, and consultants of the agency whose position with the agency entails making, or participating in making, governmental decisions that may foreseeably have a material effect on one or more of the person's economic interests.

Under Section 87302, subdivision (b), an agency's conflict of interest code must require every designated employee of the agency to file an annual SEI at the time specified in the conflict of interest code disclosing reportable investments, business positions, interest in real property and income held or received at any time during the previous calendar year or since the date the designated employee took office if during the calendar year. The applicable Conflict of Interest Code for the City of Chula Vista ("City COIC") requires that each designated employee file an annual statement on or by April 1 of each year. According to the City COIC, a Commissioner of the GMOC is a designated position.

### **SUMMARY OF THE EVIDENCE**

Documents supporting the summary of the evidence are included in the attached Certification filed herewith at Exhibit A, A-11 through A-23, and incorporated herein by reference.

Respondent Armida Torres was appointed as a Commissioner of the City of Chula Vista GMOC on April 7, 2009, and assumed office on April 21, 2009.

As a Commissioner, Respondent Torres is a “designated employee” as defined in Section 82019, subdivision (a), of the Act and in the City COIC. As required by Section 87302 and the City COIC, Respondent was required to file an assuming office and annual SEIs.

### **COUNT 1**

**Violation: Failure to File an Assuming Office Statement of Economic Interests in Violation of Section 87300 of the Government Code.**

Because Respondent was a Commissioner of GMOC, she was required to file an assuming office SEI within 30 days of assuming office, disclosing her reportable economic interests held during the previous calendar year or since the date the designated employee took office if during the calendar year. Because Respondent assumed office on April 21, 2009, she had a duty to file an assuming office statement of economic interests by May 21, 2009.

On or about April 16, 2009, the City of Chula Vista Clerk notified Respondent that she was required to file a SEI no later than May 21, 2009. (Certification, Exhibit A-11.)

On or about October 19, 2009, the City of Chula Vista Clerk sent a letter notifying Respondent that she had failed to file an annual SEI by the April 1, 2009 deadline. (Certification, Exhibit A-12.)

On or about November 4, 2009, the City of Chula Vista Clerk sent a letter to Respondent stating that the previous notice should have informed Respondent that she had failed to file her assuming office SEI, due on May 21, 2009, not an annual SEI, due by April 1, 2009. This letter also notified Respondent that she still needed to file her assuming office SEI. (Certification, Exhibit A-13.)

On or about November 19, 2009, after receiving no SEI from the Respondent, the City of Chula Vista Clerk referred the matter to the FPPC’s Enforcement Division. (Certification, Exhibit A-14.)

On December 9, 2009, Adrienne Korchmaros, a Political Reform Consultant working in the Enforcement Division of the Fair Political Practices Commission, sent a letter to Respondent requesting that she file the past due assuming office SEI. This letter was not returned undeliverable. (Certification, Exhibit A-15.)

On January 14, 2010, Ms. Korchmaros sent a second letter to Respondent requesting that she file the past due assuming office SEI. This letter was not returned undeliverable. (Certification, Exhibit A-16.)

On February 3, 2010, Ms. Korchmaros contacted Respondent by telephone, and spoke with her. Ms. Korchmaros notified Respondent of her duty to file the past due assuming office SEI. Respondent informed Ms. Korchmaros that she should send future correspondence to the same

address which had previously been used, but using a different zip code. (Certification, Exhibit A-17.)

Following the phone call, on February 3, 2010, Ms. Korchmaros sent a letter requesting that Respondent file the past due assuming office SEI. This letter incorrectly indicated that the date was February 3, 2009. This letter was not returned undeliverable. (Certification, Exhibit A-18.)

On March 4, 2010, Ms. Korchmaros sent a letter requesting that Respondent file the past due assuming office SEI. This letter was not returned undeliverable. (Certification, Exhibit A-19.)

By failing to file her assuming office SEI by May 21, 2009, Respondent violated Government Code Sections 87300 and 87302, subdivision (b).

### **COUNT 2**

**Violation: Failure to File an Annual Statement of Economic Interests in Violation of Section 87300 of the Government Code.**

As a Commissioner of GMOC Respondent was required to file an annual SEI. The filing deadline for the period covering January 1, 2009, through December 31, 2009, was April 1, 2010.

On or about February 15, 2010, the City of Chula Vista Clerk sent a letter notifying Respondent that she must file an annual SEI by the April 1, 2010 deadline. (Certification, Exhibit A-20.)

On or about April 15, 2010, the City of Chula Vista Clerk sent a second letter notifying Respondent that she had failed to file an annual SEI by the April 1, 2010 deadline, and requested that she file immediately. (Certification, Exhibit A-21.)

On or about April 27, 2010, the City of Chula Vista Clerk left a voicemail for Respondent notifying her that she had failed to file an annual SEI by the April 1, 2010 deadline, and notifying her that she still needed to file. (Certification, Exhibit A-22.)

On or about May 7, 2010, the City of Chula Vista Clerk sent a letter to Respondent notifying her that she had failed to file an annual SEI by the April 1, 2010 deadline, and notifying her that she still needed to file. (Certification, Exhibit A-23.)

On or about 14 June 2010, after receiving no SEI from the Respondent, the City of Chula Vista Clerk referred the matter to the FPPC's Enforcement Division. (Certification, Exhibit A-24.)

Respondent did not file the 2009 Annual SEI by April 1, 2010.

By failing to file her 2009 Annual SEI by April 1, 2010, Respondent violated Government Code Sections 87300 and 87302, subdivision (b).

### **CONCLUSION**

This matter consists of two counts of violating Sections 87300 which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000) for each violation, for a total administrative penalty of Ten Thousand Dollars (\$10,000).

Failures to file SEI's have received fines on the lower end of the penalty range. Higher penalties are typically only awarded in cases where the respondent has accompanying violations, a prior history of non-filing, and/or prior prosecutions.

### **FACTORS IN AGGRAVATION**

Respondent has disregarded numerous notifications regarding her duty to file both her Assuming Office Statement of Economic Interests and her 2009 Annual Statement of Economic Interests, necessitating Enforcement Division action in this regard. Respondent's failure to file her 2009 Annual Statement of Economic Interests indicates a pattern of willfully ignoring filing obligations under the Act which deprived the public of important information about Respondent's economic interests. To date, Respondent has not filed either the delinquent Assuming Office Statement of Economic Interests or her delinquent 2009 Annual Statement of Economic Interests.

### **FACTORS IN MITIGATION**

Respondent Torres has no prior FPPC enforcement action.

### **PENALTY**

The facts of this case, including the aggravating and mitigating factors discussed above, justify a fine of Two Thousand Dollars (\$2,000) per violation, for a total penalty of Four Thousand Dollars (\$4,000).